portion of one is taken. *Minnesota Valley R. Co.* v. *Doran*, 15 Minn. 230. In the present case, the test is not satisfied, since the plaintiff's right in the street is merely nominal, the public being virtually the owner. See *City of Schenectady* v. *Trustees of Union College*, 144 N. Y. 241, 249, 39 N. E. 67, 68. The decision, therefore, is clearly correct.

EQUITY — JURISDICTION — SECURITY FROM ADMINISTRATOR FOR PAYMENT OF UNMATURED DEBT OF DECEDENT. — The plaintiff's claim against the estate of the maker of notes, maturing more than three years after the maker's death, was disputed by his administrator. The only remedy provided by the Code was suit at law after the notes matured. The administrator demurred to the plaintiff's petition in equity to have sufficient assets set aside to meet the claim when due. *Held*, that the demurrer should be overruled. *Bankers' Surety Co.* v. *Meyer*, 131 N. Y. Supp. 57 (App. Div.).

Creditors' bills against an administrator constitute one of the oldest heads of equity jurisdiction. See POMEROY, EQUITY JURISPRUDENCE, 3 ed., §§ 348 *et seq.*, §§ 1151 *et seq.* To-day administration proceedings are carried on almost exclusively in the probate court. Statutes usually provide that a fund may be ordered to be set apart to meet unmatured or contingent claims. *Hoyt* v. *Bonnett*, 50 N. Y. 538. See *Cobb* v. *Kempton*, 154 Mass. 266, 268, 28 N. E. 264, 265. But generally equity still has at least supplementary jurisdiction. See *Chipman* v. *Montgomery*, 63 N. Y. 221, 235, 236. The principal case proceeds on the ground of a trust. But, though the executor holds the assets in a fiduciary relation to creditors and legatees, he is to be distinguished from a trustee. See AMES, CASES ON TRUSTS, 2 ed., 73, note 4. In a suit against an executor for a debt, the period of limitation is not that for enforcing trusts. *Scott* v. *Jones*, 4 Cl. & Fin. 382. A legacy is not a trust under a statute excepting trusts from the operation of a creditor's bill. *Bacon* v. *Bonham*, 27 N. J. Eq. 209. The creditor, however, should be able to secure the payment of his unmatured claim. *Johnson* v. *Mills*, 1 Ves. Sen. 282. See *Petrie* v. *Voorhees' Exr.*, 18 N. J. Eq. 285, 288. One whose legacy is payable in the future has a similar right. *Merritt* v. *Richardson*, 14 All. (Mass.) 239, 242. Likewise, a life-tenant of personalty may be required to give security for the protection of the remainderman. *Lyde* v. *Taylor*, 17 Ala. 270.

INSURANCE — NATURE AND INCIDENTS OF INSURANCE CONTRACTS — CONTRACT TO DEFEND PHYSICIAN AGAINST SUITS FOR MALPRACTICE. — The plaintiff company brought a bill to restrain the insurance commissioner from interfering with its business, which consisted in issuing a contract to physicians, whereby the company in consideration of an annual payment agreed to employ an attorney to defend the holder of the contract in all suits for civil malpractice that should be brought against him; but the company was not to pay the judgment if the suit were lost. *Held*, that the bill should be dismissed. *Physicians' Defense Co.* v. *Cooper*, 188 Fed. 832 (Circ. Ct., N. D. Cal.).

"Insurance is a contract by which the one party in consideration of a price paid adequate to the risk becomes security to the other that he shall not suffer loss, damage, or prejudice by the happening of the perils specified to certain things which may be exposed to them." See *Lucena* v. *Craufurd*, 2 B. & P. N. R. 269, 301; *Cummings* v. *Cheshire County M. F. Ins. Co.*, 55 N. H. 457, 458. It differs from a contract of warranty or for services by the fact that the consideration is paid simply for assuming the risk and is not proportional to the property or services expected in return. *Cole* v. *Haven*, 7 N. W. 383 (Ia.); *Commonwealth* v. *Provident Bicycle Association*, 178 Pa. St. 636, 36 Atl. 197. It differs from the ordinary contract of suretyship, because of its separate development historically; but modern corporations which make a business of acting as sureties for fixed premiums are recognized as insurance companies.

See *Cowles* v. *United States Fidelity and Guaranty Co.*, 32 Wash. 120, 124, 72 Pac. 1032, 1033; RICHARDS, INSURANCE LAW, 3 ed., § 469. It differs from a wagering contract by the requirement that the insured must at the time of making the contract expect to suffer some worldly loss or liability if the contingency happens, though the misfortune for which he is to be indemnified need not be the loss of a legal right or the incurring of a legal liability. *Le Cras* v. *Hughes*, 3 Doug. 81; *Lord* v. *Dall*, 12 Mass. 115. The indemnity promised need not be a money payment. *Beals* v. *Home Ins. Co.*, 36 N. Y. 522; *Tolman* v. *Manufacturers Ins. Co.*, 1 Cush. (Mass.) 73. In the light of these broad principles, the decision of the principal case seems well founded. But the authorities are divided. *Accord*, *Physicians' Defense Co.* v. *O'Brien*, 100 Minn. 490, 111 N. W. 396. *Contra*, *State* v. *Laylin*, 73 Oh. St. 90, 76 N. E. 567; *Vredenburgh* v. *Physicians' Defense Co.*, 126 Ill. App. 509.

LEGACIES AND DEVISES — ADEMPTION — EFFECT OF MERGER OF COMPANY ON BEQUEST OF SHARES. — A testator bequeathed "twenty-three of the shares belonging to me in the London and County Banking Co." upon certain trusts. Between the date of the will and that of the testator's death the company amalgamated with another company, which resulted in a change of name and a new issue of capital, each original £80 share being subdivided into four £20 shares. *Held*, that the bequest passes ninety-two of the new shares. *Re Clifford's Estate*, 56 Sol. J. 91 (Eng., Ch. D., Nov. 9, 1911).

The theory that ademption of specific legacies depends upon intent has long been obsolete in England. *Stanley* v. *Potter*, 2 Cox 180. It is now well settled that whenever the specific thing devised has ceased to belong to the testator, the bequest is adeemed. *In re Bridle*, 4 C. P. D. 336. The weight of American authority is in accord with the English cases. *Snowden* v. *Banks*, 9 Ired. (N. C.) 373. *Contra*, *Joynes* v. *Hamilton*, 98 Md. 665, 57 Atl. 25. Nevertheless, a legacy is not adeemed if the alteration is purely formal. *Oakes* v. *Oakes*, 9 Hare 666. Such is the case where there is a mere subdivision of a company's shares. *Re Greenberry*, 55 Sol. J. 633. Where, on the other hand, the new shares represent an interest in a substantially different company, the change is more than a mere matter of form. The principal case seems opposed to previous English decisions. *Cf. In re Slater*, [1907] 1 Ch. 665; *In re Gray*, 36 Ch. D. 205. It is, however, in accord with American authorities. *In re Peirce*, 25 R. I. 34, 54 Atl. 588; *Skipwith* v. *Cabell's Exr.*, 19 Grat. (Va.) 758. Though hardly consistent with the strict theory of ademption, the result of the principal case seems desirable, since the likeness of the new shares to the old is more important than their differences. The case is further complicated by a provision of the Wills Act, which was rightly held not to affect the result. 7 WILL. IV. & 1 VICT. c. 26, § 24. But *cf. In re Slater*, *supra*.

MARRIAGE — NULLIFICATION — ALLOWANCE TO WIFE. — A marriage was annulled on account of the wife's incapacity, theretofore unknown to her. During the eighteen years from the marriage to its annulment the husband accumulated $70,000. *Held*, that an allowance to the wife of $10,000 is not improper. *Coats* v. *Coats*, 118 Pac. 441 (Cal.).

Alimony is allowed in divorce proceedings in lieu of the wife's right to future support. See *Ex parte Spencer*, 83 Cal. 460, 464, 23 Pac. 395, 396. Nullification proceedings present no such basis for alimony, for by the decree the wife's right to support is avoided. *Willits* v. *Willits*, 76 Neb. 228, 107 N. W. 379. Consequently, the orthodox view disallows alimony in such cases. *Stewart* v. *Vandervort*, 34 W. Va. 524, 12 S. E. 736. See GODOLPHIN, ECCLESIASTICAL LAWS, 509. The wife may have several minor remedies. She can recover for fraud in procuring the marriage. *Blossom* v. *Barrett*, 37 N. Y. 434. The husband, being liable for household expenses until nullification, must reim-